

REMARKS

Claims 16-23 and 25-28 are pending in the present application. Claims 1-15 and 24 have previously been cancelled. Claim 16 is the sole independent claim.

Specification

Applicants have amended the Specification slightly to further clarify the claim to an earlier filing date based on the Provisional Application. Applicants also assert that this claim has already been sufficiently made as recognized by the Official Filing Receipt which acknowledges Applicants' claim for the benefit of the filing date of U.S. Application Serial No. 60/264,335, filed on January 26, 2001. The above Specification amendment merely clarifies which section of the law entitles Applicants to this filing date claim.

Allowable Subject Matter

Applicants appreciate the Examiner's indication that claims 25-28 would be allowable if rewritten in independent form including all of the features of the base claim and any intervening claims. For the reasons discussed below, however, Applicants believe that all pending claims are in condition for allowance and earnestly solicit a formal indication thereof.

Art Rejection

Claims 16-18 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Sakamoto (US 2002/0048062 A1) in view of Leng (USP 6,339,663). Claims 19-23 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Sakamoto, Leng and further in view of Sasaoka (USP 6,574,404 B2). These rejections, insofar as they pertain to the presently pending claims, are respectfully traversed.

Clearly, the Sakamoto publication is the primary publication relied upon in the Office Action. Indeed, Leng and Sasaoka are merely applied to teach the features of certain dependent claims. Although Leng is also applied to teach sending supervisory signals onto pathways Leng does not disclose or suggest the more important base features of claim 16 including a dispersion compensating module or control circuit that adjusts a dispersion characteristic associated with the dispersion compensating module in response to data carried by the service channel.

Applicants respectfully submit that the Sakamoto publication is not applicable to the present application. The reason is that the present non-provisional patent application claims the benefit of Provisional Application Serial No. 60/264,335 under 37 C.F.R. § 119(e). The present application was

filed within 12 months of the Provisional Application filing date. Furthermore, the Provisional Application disclosure fully supports the claims at issue. Thus, the present application is entitled to the earlier filing date of January 26, 2001.

This earlier filing date predates the filing date of Sakamoto which was filed in the U.S. on February 6, 2001. Thus, Sakamoto is effectively removed as a valid reference against the pending application.

Because both prior art rejections have Sakamoto as their foundation and because Sakaomoto is not applicable to the present application, both prior art rejections must fail.

Applicants further submit that neither Leng nor Sasaoka are sufficient by themselves or in combination with each other to reject any of the claims of the present application. Indeed, extensive arguments have previously been submitted against the Sasaoka reference in the last response filed March 18, 2004 and Applicants hereby incorporate those arguments by reference.

Still further, Leng is merely applied to teach a minor feature of sending an optical supervisory channel on an alternative pathway and does not, in any event, teach or suggest any of the other features of the claim, particularly the dispersion compensating module and control circuit of independent claim 16.

For all of the above reasons, taken alone or in combination, Applicants respectfully request reconsideration and withdrawal of the prior art rejections.

Conclusion

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact Michael R. Cammarata (Reg. No. 39,491), at the telephone number of (703) 205-8000, to conduct an interview in an effort to expedite prosecution in connection with the present application.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. §§ 1.16 or 1.17; particularly, extension of time fees.

Respectfully submitted,

BIRCH, STEWART, KOLASCH & BIRCH, LLP

By


Michael R. Cammarata, #39,491

MRC/kpc

P.O. Box 747
Falls Church, VA 22040-0747
(703) 205-8000